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ABSTRACT

Part of a series of classroom aids designed for real estate instructors, this instructional packet was developed to help real estate students understand the content and complexities of the Real Estate License Act of Texas. The packet has three parts. The first two parts provide an instructor's evaluation form and the instructor's guide to the law, which presents the full text of the act and highlights sections that answer specific questions covered in accompanying overhead visuals. The remainder of the packet presents the overhead masters, which focus on general provisions of the law; the definitions of real estate, a broker, a salesperson, exemptions, a "person," the Texas Real Estate Commission; persons exempted from licensure; acts of a broker or salesperson; the composition, funding, and administration of the Texas Real Estate Commission; the funding of the Texas Real Estate Research Center; requirements for a license; establishment of competency; courses of study required for licensure; experience requirements for a broker's license; current educational requirements for the broker's and salesperson's license; the real estate recovery fund; when and how licenses are issued; review procedures for licensure; license fees; office requirements for a licensee; termination of sponsorship; compensation for real estate acts; causes for license suspension or revocation; investigation of complaints; unauthorized practice of law; commission hearings; listing contract forms; access to commission information files; penalties; compensation; regulations governing inspectors of real estate improvements; and sources of additional information. (AYC)

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TEACHERS INSTRUCTIONAL PACKET (TIP)

No. 1, Fall 1984

Revised Fall 1985

THE TEXAS REAL ESTATE LICENSE ACT

Texas Real Estate Research Center
College of Agriculture
Texas A&M University
College Station, Texas 77843-2115

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JC 870 357

This packet is designed to help real estate instructors clearly communicate with students studying for real estate careers. The content and materials may be modified as the instructor deems appropriate. Reproduction of materials for student use is encouraged.

TIPS on the TIP

This Teacher Instructional Packet (TIP) is designed to provide the real estate instructor with classroom aids. Packets have been reviewed carefully, but there is always room for improvement. Suggestions to improve the usefulness of the TIP are welcomed.

Introduction to TIP-1

TIP-1 has been developed to help students understand the content and complexities of The Real Estate License Act (Art. 6573a. V.A.C.S.)

TIP-1 has three parts:

* The instructor's guide to the law
* Overhead masters keyed to the law
* An instructor's evaluation

This material is provided as a supplement to the instructor's course content. A "pat" presentation is not provided. Rather, guidelines are provided from which the instructor may take as much or as little as needed.

NOTE: Instructors should refer to the latest edition of Rules of The Texas Real Estate Commission available from the Texas Real Estate Commission for a nominal fee. In addition, changes in rules are published in the Texas Register, copies of which are available from the office of the Texas Secretary of State.

INSTRUCTORS EVALUATION

In order for the Texas Real Estate Research Center to be able to better assess the effectiveness of this packet, your input is requested. Please complete this form and return it to the address provided.

CONCEPT

1. What overall rating would you give this concept?

useless 1 2 3 4 5 6 7 8 9 10 invaluable

RATING THE ELEMENTS

2. How do you rate the elements of this TIP?

Content:

too general 1 2 3 4 5 6 7 8 9 10 too technical

Amount of material:

too little 1 2 3 4 5 6 7 8 9 10 too much

Format:

too simple 1 2 3 4 5 6 7 8 9 10 too complex

STRENGTHS AND WEAKNESSES

3. What were the strengths of the package? _____

_____

_____

_____

4. What were the weaknesses of the package? _____

_____

_____

SUGGESTIONS

5. What specific changes would you like to see in future TIPs?

_____

_____

6. What additional topics would you suggest for the TIP series?

a. _____ c. _____

b. _____ d. _____

EXPECTED USE

7. Do you expect using this packet in the next three months?

_____ yes _____ no

8. If you answered "yes" to question 7, to what classes will this material be presented?

_____

_____

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TIP-1
Revised 1985

THE REAL ESTATE LICENSE ACT

Visual #1
What are the general provisions of the Real Estate License Act?

Section 1. (a) This Act shall be known and may be cited as "The Real Estate License Act."

(b) It is unlawful for a person to act in the capacity of, engage in the business of, or advertise or hold himself out as engaging in or conducting the business of a real estate broker or a real estate salesman within this State without first obtaining a real estate license from the Texas Real Estate Commission. It is unlawful for a person licensed as a real estate salesman to act or attempt to act as a real estate agent unless he is, at such time, associated with a licensed Texas real estate broker and acting for the licensed real estate broker.

(c) Each real estate broker licensed pursuant to this Act is responsible to the commission, members of the public, and his clients for all acts and conduct performed under this Act by himself or by a real estate salesman associated with or acting for the broker.

(d) No real estate salesman shall accept compensation for real estate sales and transactions from any person other than the broker under whom he is at the time licensed or under whom he was licensed when he earned the right to compensation.

(e) No real estate salesman shall pay a commission to any person except through the broker under whom he is at the time licensed.

Section 2. As used in this Act:

(1) "Real estate" means a leasehold, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere.

Visual #2
What is real estate?

(2) "Real estate broker" means a person who, for another person and for a fee, commission, or other valuable consideration, or with the intention or in the expectation or on the promise of receiving or collecting a fee, commission, or other valuable consideration from another person:

Visual #3
Who is a real estate broker?

(A) sells, exchanges, purchases, rents, or leases real estate;

(B) offers to sell, exchange, purchase, rent, or lease real estate;

(C) negotiates or attempts to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate;

(D) lists or offers or attempts or agrees to list real estate for sale, rental, lease, exchange, or trade;

(E) appraises or offers or attempts or agrees to appraise real estate;

(F) auctions, or offers or attempts or agrees to auction, real estate;

(G) buys or sells or offers to buy or sell, or otherwise deals in options on real estate;

(H) aids, attempts, or offers to aid in locating or obtaining for purchase, rent, or lease any real estate;

(I) procures or assists in the procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate; or

(J) procures or assists in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate.

(3) "Broker" also includes a person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell the real estate or any part thereof, in lots or parcels or other disposition thereof. It also includes a person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning the real estate to brokers, or both.

(4) "Real estate salesman" means a person associated with a Texas-licensed real estate broker for the purposes of performing acts or transactions comprehended by the definition of "real estate broker" as defined in this Act.

Visual #4
Who is a real estate salesman?

(5) "Person" means an individual, a partnership, or a corporation, foreign or domestic.

Visual #5
Who does the law define as a person? What is the Commission?

(6) "Commission" means the Texas Real Estate Commission.

(7) If the sense requires it, words in the present tense include the future tense; in the masculine gender, include the feminine or neuter gender; in the singular number, include the plural number; in the plural number, include the singular number; the word "and" may be read "or"; and the word "or" may be read "and". This Act is substantive in character and is intended to be applied prospectively only.

Visual #6
Who is exempted from licensure?

Section 3. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act, to wit:

(a) an attorney at law licensed in this state or in any other state;

(b) an attorney in fact under a duly-executed power of attorney authorizing the consummation of a real estate transaction;

(c) a public official in the conduct of his official duties;

(d) a person acting officially as a receiver, trustee, administrator, executor, or guardian;

(e) a person acting under a court order or under the authority of a will or a written trust instrument;

(f) a salesperson employed by an owner in the sale of structures and land on which said structures are situated, provided such structures are erected by the owner in the due course of his business;

(g) an on-site manager of an apartment complex;

(h) transactions involving the sale, lease, or transfer of any mineral or mining interest in real property;

(i) an owner or his employees in renting or leasing his own real estate whether improved or unimproved;

(j) transactions involving the sale, lease, or transfer of cemetery lots.

Visual #7
What acts constitute those of a broker or salesperson?

Section 4. A person who, directly or indirectly for another, with the intention or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform, or performs, a single act defined in Subdivisions 2 and 3, Section 2 of this Act, whether as a part of a transaction, or as an entire transaction, is

deemed to be acting as a real estate broker or salesman within the meaning of this Act. The commission of a single such act by a person required to be licensed under this Act and not so licensed shall constitute a violation of this Act.

Section 5. (a) The administration of the provisions of this Act is vested in a commission, to be known as the "Texas Real Estate Commission," consisting of nine members to be appointed by the governor with the advice and consent of two-thirds of the senate present. The commissioners hold office for staggered terms of six years with the terms of three members expiring every two years. Each member holds office until his successor is appointed and has qualified. Within 15 days after his appointment, each member shall qualify by taking the constitutional oath of office and furnishing a bond payable to the Governor of Texas in the penal sum of $10,000, conditional on the faithful performance of his duties as prescribed by law. A vacancy for any cause shall be filled by the governor for the unexpired term. Notwithstanding any other provisions in this subsection, the six members of the commission in office on September 1, 1979, shall continue in office until the 5th day of October of the years in which their respective terms expire, or until their successors are appointed and have qualified. The terms of office of the appointees who fill the offices of incumbent members whose terms expired October 5, 1979, 1981, and 1983, expire on January 31, 1985, 1987, and 1989, respectively. Each succeeding term of office expires on January 31 of odd-numbered years. For the three public members initially appointed under this Act, the governor shall designate one member for a term expiring January 31, 1981, one member for a term expiring January 31, 1983, and one member for a term expiring January 31, 1985. At a regular meeting in February of each year, the commission shall elect from its own membership a chairman, vice-chairman, and secretary. Each member of the commission shall be present for at least one-half of the regularly scheduled meetings held each year by the commission. The failure of a member to meet this requirement automatically removes the member from the commission and creates a vacancy on the commission. A quorum of the commission consists of five members.

(b) All members, officers, employees, and agents of the commission are subject to the code of ethics and standards of conduct imposed by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

Visual #8
What is the composition of the membership of the Texas Real Estate Commission?

(c) Appointments to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. Each member of the commission shall be a citizen of Texas and a qualified voter. Six members shall have been engaged in the real estate brokerage business as licensed real estate brokers as their major occupations for at least five years next preceding their appointments. Three members must be representatives of the general public who are not licensed under this Act and who do not have, other than as consumers, a financial interest in the practice of a real estate broker or a real estate salesman. It is grounds for removal from the commission if:

(1) a broker-member of the commission ceases to be a licensed real estate broker; or

(2) a person is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the commission.

(d) Each member of the commission shall receive as compensation for each day actually spent on his official duties the sum of $75 and his actual and necessary expenses incurred in the performance of his official duties.

(e) The commission shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposes and intents of this Act or to insure compliance with the provisions of this Act. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the commission receives the committees' statements. In addition to any other action, proceeding, or remedy authorized by law, the commission shall have the right to institute an action in its own name to enjoin any violation of any provision of this Act or any rule or regulation of the commission and in order for the commission to sustain such action it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result

from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The commission shall not be required to give any appeal bond in any action or proceeding to enforce the provisions of this Act.

(f) The commission is empowered to select and name an administrator, who shall also act as executive secretary, and to select and employ such other subordinate officers and employees as are necessary to administer this Act. The salaries of the administrator and the officers and employees shall be fixed by the commission not to exceed such amounts as are fixed by the applicable general appropriations bill. The commission may designate a subordinate officer as assistant administrator who shall be authorized to act for the administrator in his absence. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the commission or serve as a member of the commission.

(g) The commission shall adopt a seal of a design which it shall prescribe. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original.

(h) Except as provided in Subsections (i) and (j) of this section, all money derived from fees, assessments, or charges under this Act, shall be paid by the commission into the State Treasury for safekeeping, and shall be placed by the State Treasurer in a separate fund to be available for use of the commission in the administration of this Act on requisition by the commission. A necessary amount of the money so paid into the State Treasury is hereby specifically appropriated to the commission for the purpose of paying the salaries and expenses necessary and proper for the administration of this Act, including equipment and maintenance of supplies for the offices or quarters occupied by the commission, and necessary travel expenses for the commission or persons authorized to act for it when performing duties under this Act. At the end of the state fiscal year, any unused portion of the funds in the special account, except such funds as may be appropriated to administer this Act pending receipt of additional revenues available for that purpose, shall be paid into the General Revenue Fund. The comptroller shall, on requisition of the commission, draw warrants from time to time on the State Treasurer for the

Visual #9
How is the Texas Real Estate Commission administered and funded?

amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. However, all money expended in the administration of this Act shall be specified and determined by itemized appropriation in the general departmental appropriation bill for the Texas Real Estate Commission, and not otherwise.

(i) In the event that fees collected under the Residential Service Company Act (Article 6573b, Vernon's Texas Civil Statutes), are insufficient to fund the legislative appropriation for that activity, funds from the real estate license fund are hereby authorized to be used for the administration of that Act. In no event, however, will the total expenditures for that activity exceed the legislative appropriation therefor.

(j) Fifteen dollars received by the commission from fees received from real estate brokers and $7.50 received by the commission from fees received from real estate salesmen for licensure status shall be transmitted annually to Texas A&M University for deposit in the separate banking account. The money in the separate account shall be expended for the support and maintenance of the Texas Real Estate Research Center and for carrying out the purposes, objectives, and duties of that center. However, all money expended from the separate account shall be as determined by legislative appropriation.

Visual #10
How much of the collected fees are used to fund the Texas Real Estate Research Center at Texas A&M University?

(k) The Texas Real Estate Commission is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1991.

(l) The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Section 6. (a) A person desiring to act as a real estate broker in this state shall file an application for a license with the commission on a form prescribed by the commission. A broker desiring to engage a person to participate in real estate brokerage activity shall join the person in filing an application for a salesman license on a form prescribed by the commission.

Visual #11
What are the requirements for a license?

(b) To be eligible for a license, an individual must be a citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a legal resident of Texas for at least 60 days immediately preceding the filing of an application, and must satisfy the commission as to his honesty, trustworthiness, integrity, and competency. However, the competency of the individual, for the purpose of qualifying for the granting of licensure privileges, shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

(c) To be eligible for a license, a corporation must designate one of its officers to act for it. The designated person must be a citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a resident of Texas for at least 60 days immediately preceding the filing of an application, and must be qualified to be licensed individually as a real estate broker. However, the competency of the person shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

Section 6A. (a) If, at any time before a person applies for a license under this Act, the person requests the commission to determine whether his moral character complies with the commission's moral character requirements for licensing under this Act and the person pays a $10 fee for the moral character determination, the commission shall make its determination of the person's moral character.

(b) Not later than the 30th day after the day on which the commission makes its determination, the commission shall give the person notice of that determination.

(c) If the person later applies for a license under this Act, the commission may conduct a supplemental moral character check of the person. The supplemental check may cover only the time since the day on which the person requested the original moral character determination.

Section 7. (a) Competency as referred to in Section 6 of this Act shall be established by an examination prepared by or contracted for by the commission. The examination shall be given at such times and at such places within the state as the commission shall prescribe. The examination shall be of scope sufficient in the judgment of the commission to determine that a person is competent to act as a real estate broker or salesman in a manner to protect the interest of the public. The examination for a salesman license shall be

Visual #12
How is competency established?

less exacting and less stringent than the examination for a broker license. The commission shall furnish each applicant with study material and references on which his examination shall be based. When an applicant for real estate license fails a qualifying examination, he may apply for reexamination by filing a request therefor together with the proper fee. The examination requirement shall be satisfied within one year from the date the application for a license is filed. Courses of study required for licensure shall include but not be limited to the following which shall be considered core real estate courses for all purposes of this Act:

Visual #13
What courses of study are required for licensure?

(1) Principles of Real Estate (or equivalent) shall include but not be limited to an overview of licensing as a real estate broker and salesman, ethics of practice, titles to and conveyancing of real estate, legal descriptions, law of agency, deeds, encumbrances and liens, distinctions between personal and real property, contracts, appraisal, finance and regulations, closing procedures, and real estate mathematics.

(2) Real Estate Appraisal (or equivalent) shall include but not be limited to the central purposes and functions of an appraisal, social and economic determinant of value, appraisal case studies, cost, market data and income approaches to value estimates, final correlations, and reporting.

(3) Real Estate Law (or equivalent) shall include but not be limited to legal concepts of real estate, land description, real property rights and estates in land, contracts, conveyances, encumbrances, foreclosures, recording procedures, and evidence of titles.

(4) Real Estate Finance (or equivalent) shall include but not be limited to monetary systems, primary and secondary money markets, sources of mortgage loans, federal government programs, loan applications, processes and procedures, closing costs, alternative financial instruments, equal credit opportunity acts, community reinvestment act, and state housing agency.

(5) Real Estate Marketing (or equivalent) shall include but not be limited to real estate professionalism and ethics, characteristics of successful salesmen, time management, psychology of marketing, listing procedures, advertising, negotiating and closing, financing, and the Deceptive Trade Practices-Consumer Protection Act, as amended, Section 17.01 et seq., Business & Commerce Code.

(6) Real Estate Mathematics (or equivalent) shall include but not be limited to basic arthmetic skills and review of mathematical logic, percentages, interest, time-valued money, depreciation, amortization, proration, and estimation of closing statements.

(7) Real Estate Brokerage (or equivalent) shall include but not be limited to law of agency, planning and organization, operational policies and procedures, recruiting, selection and training of personnel, records and control, and real estate firm analysis and expansion criteria.

(8) Property Management (or equivalent) shall include but not be limited to role of property manager, landlord policies, operational guidelines, leases, lease negotiations, tenant relations, maintenance, reports, habitability laws, and the Fair Housing Act.

(9) Real Estate Investments (or equivalent) shall include but not be limited to real estate investment characteristics, techniques of investment analysis, time-valued money, discounted and nondiscounted investment criteria, leverage, tax shelters, depreciation, and applications to property tax.

(b) The commission shall waive the examination of a applicant for broker licensure who has, within one year previous to the filing of his application, been licensed in this state as a broker, and shall waive the examination of an applicant for salesman licensure who has, within one year previous to the filing of his application, been licensed in this state as either a broker or salesman.

(c) From and after the effective date of this Act, each applicant for broker licensure shall furnish the commission satisfactory evidence that he has had not less than two years active experience in this state as a licensed real estate salesman practitioner during the 36-month period immediately preceding the filing of the application; and, in addition, shall furnish the commission satisfactory evidence of having completed successfully 36 semester hours of core real estate courses or related courses accepted by the commission. On January 1, 1983, the number of required semester hours shall be increased to 48. On or after January 1, 1985, the required semester hours shall be increased to 60. These qualifications for broker licensure shall not be required of an applicant who, at the time of making the application, is duly licensed as a real estate broker by any other state in the United States if that state's requirements for licensure are comparable to those of

Visual #14
What are the experience requirements for a broker's license?

Texas. As a prerequisite for applying for broker licensure, those persons licensed as salesmen subject to the annual education requirement provided by Subsection (d) of this section shall, as part of the semester hours required by this subsection, furnish the commission satisfactory evidence of having completed all the requirements of Subsection (d) of this section.

(d) From and after the effective date of this Act, as a prerequisite for applying for salesman licensure, each applicant shall furnish the commission satisfactory evidence of having completed 12 semester hours of post-secondary education, six semester hours of which must be completed in core real estate courses, of which a minimum of two semester hours must be completed in Principles of Real Estate as described in Subdivision (1) of Subsection (a) of Section 7. The remaining six semester hours shall be completed in core real estate courses or related courses. As a condition for the first annual certification of salesman licensure privileges, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 14 semester hours, 8 semester hours of which must be completed in core real estate courses. As a condition for the second annual certification of salesman licensure privileges, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 16 semester hours, 10 semester hours of which must be completed in core real estate courses. As a condition for the third annual certification of salesman licensure privileges, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 18 semester hours, 12 semester hours of which must be completed in core real estate courses.

Section 7. (e) Repealed.

(f) Insofar as is necessary for the administration of this Act, the commission is authorized to inspect and accredit educational programs or courses of study in real estate and to establish standards of accreditation for such programs conducted in the State of Texas, other than accredited colleges and universities. Schools, other than accredited colleges and universities, which are authorized to offer real estate educational courses pursuant to provisions of this section shall be required to maintain a corporate surety bond in the sum of $10,000 payable to the commission, for the benefit of a party who may suffer damages resulting from failure of a commission-approved school or course to fulfill obligations attendant to the approval.

Visual #15
What are the current educational requirements for the broker's and salesman's license?

(g) A person licensed as a salesman on May 19, 1975, is not subject to the educational requirements or prerequisites of this Act as a condition for holding salesman licensure privileges. A person licensed as a broker on May 19, 1975, is not subject to the educational requirements or prerequisites of this Act as a condition for holding broker licensure privileges.

(h) Notwithstanding any other provision of this Act, from and after the effective date of this Act each applicant for broker licensure shall furnish the commission with satisfactory evidence:

(1) that he has satisfied the requirements of Subsection (c) of this section; or

(2) that he is a licensed real estate broker in another state, that he has had not less than two years' active experience in the other state as a licensed real estate salesman or broker during the 36-month period immediately preceding the filing of the application, and that he has satisfied the educational requirements for broker licensure as provided by Subsection (c) of this section; or

(3) that he has, within one year previous to the filing of his application, been licensed in this state as a broker.

(i) Notwithstanding any other provision of this Act, the commission shall waive the requirements of Subsection (d) of Section 7 of this Act for an applicant for salesman licensure who has, within one year previous to the filing of his application, been licensed in this state as a broker or salesman. However, with respect to an applicant for salesman licensure who was licensed as a salesman within one year previous to the filing of the application but whose original licensure privileges were issued under the provisions that second and third annual certification of the licensure privileges would be conditioned upon furnishing satisfactory evidence of successful completion of additional education, the commission shall require the applicant to furnish satisfactory evidence of successful completion of any additional education that would have been required if the licensure privileges had been maintained without interruption during the previous year.

(j) Not later than the 30th day after the day on which a person completes an examination administered by the commission, the commission shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the

commission shall send to the person not later than the 30th day after the day on which the request is received by the commission an analysis of the person's performance on the examination.

(k) All applicants for licensure must complete at least three classroom hours of coursework on federal, state, and local laws governing housing discrimination, housing credit discrimination, and community reinvestment or at least three semester hours of coursework on constitutional law.

Visual #16
What other courses are required?

Section 8. Part 1. (a) The commission shall establish a real estate recovery fund which shall be set apart and maintained by the commission as provided in this section. The fund shall be used in the manner provided in this section for reimbursing aggrieved persons who suffer actual damages by reason of certain acts committed by a duly licensed real estate broker or salesman, or by an unlicensed employee or agent of a broker or salesman, provided the broker or salesman was licensed by the State of Texas at the time the act was committed and provided recovery is ordered by a court of competent jurisdiction against the broker or salesman. The use of the fund as provided in Part 1 of this section is limited to an act that is either a violation of Section 15(3) or (4) of this Act.

Visual #17
What is the real estate recovery fund?

(b) On the effective date of this Act, the commission shall collect from each real estate broker and salesman licensed by this state a fee of $10 which shall be deposited in the real estate recovery fund. The commission shall suspend a license issued under the provisions of this Act for failure to pay this fee. After the effective date of this Act, when a person makes application for an original license pursuant to this Act he shall pay, in addition to his original license application fee, a fee of $10 which shall be deposited in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant.

Part 2. If on December 31 of any year the balance remaining in the real estate recovery fund is less than $300,000, each real estate broker and each real estate salesman, on recertification of his license during the following calendar year, shall pay, in addition to his license recertification fee, a fee of $10, which shall be deposited in the real estate recovery fund, or a pro rata share of the amount necessary to bring the fund to $1 million, whichever is less.

Part 3. (a) No action for a judgment which subsequently results in an order for collection from the real

estate recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment which may result in collection from the real estate recovery fund, the real estate broker or real estate salesman shall notify the commission in writing to this effect at the time of the commencement of the action.

(b) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a real estate broker, or real estate salesman, on the grounds described in Part 1(a) of this section that occurred on or after May 19, 1975, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commission, and to the judgment debtor, may apply to the court for an order directing payment out of the real estate recovery fund of the amount unpaid on the judgment, subject to the limitations stated in Part 8 of this section.

(c) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show that:

(1) the judgment is based on facts allowing recovery under Part 1(a) of this section;

(2) he is not a spouse of the debtor, or the personal representative of the spouse; and he is not a real estate broker or salesman, as defined by this Act, who is seeking to recover a real estate commission in the transaction or transactions for which the application for payment is made;

(3) he has obtained a judgment as set out in Part 3(b) of this section, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(4) the judgment debtor lacks sufficient attachable assets to satisfy the judgment; and

(5) the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(d) The court shall make an order directed to the commission requiring payment from the real estate

recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Part 3(c) of this section and that the aggrieved person has satisfied all of the requirements of Parts 3(b) and (c) of this section.

(e) A license granted under the provisions of this Act shall be revoked by the commission on proof that the commission has made a payment from the real estate recovery fund of any amount toward satisfaction of a judgment against a licensed real estate broker or salesman. No broker or salesman is eligible to receive a new license until he has repaid in full, plus interest at the current legal rate, the amount paid from the real estate recovery fund on his account. A discharge from bankruptcy shall not relieve a person from the penalties and disabilities provided in this Act.

Part 4. The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purposes of the real estate recovery fund. These funds may be invested and reinvested in the same manner as funds of the Texas State Employees Retirement System, and the interest from these investments shall be deposited to the credit of the real estate recovery fund, provided, however, that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this section.

Part 5. When the real estate commission receives notice of entry of a final judgment and a hearing is scheduled under Part 3(d) of this section, the commission may notify the Attorney General of Texas of its desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on behalf of, and in the name of, the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. In taking such action the real estate commission and the attorney general shall act only to protect the fund from spurious or unjust claims or to insure compliance with the requirements for recovery under this section.

Part 6. When, on the order of the court, the commission has paid from the real estate recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor

to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission which amount shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.

Part 7. The failure of an aggrieved person to comply with the provisions of this section relating to the real estate recovery fund shall constitute a waiver of any rights under this section.

Part 8. (a) Notwithstanding any other provision, payments from the real estate recovery fund are subject to the conditions and limitations of Subsections (b) through (d) of this part.

(b) **P**ayments may be made only pursuant to an order of a court of competent jurisdiction, as provided in Part 3, and in the manner prescribed by this section.

(c) Payments for claims, including attorneys' fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to $20,000 regardless of the number of claimants.

(d) Payments for claims based on judgments against any one licensed real estate broker or salesman may not exceed in the aggregate $50,000 until the fund has been reimbursed by the licensee for all amounts paid.

Part 9. Nothing contained in this section shall limit the authority of the commission to take disciplinary action against a licensee for a violation of this Act or the rules and regulations of the commission; nor shall the repayment in full of all obligations to the real estate recovery fund by a licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this Act.

Part 10. Any person receiving payment out of the real estate recovery fund pursuant to Section 8 of this Act shall be entitled to receive reasonable attorney fees as determined by the court, subject to the limitations stated in Part 8 of this section.

Section 9. (a) When an applicant has satisfactorily met all requirements and conditions of this Act, a license shall be issued which may remain in force and effect so long as the holder of the license remains in compliance with the obligations of this Act, which

Visual #18
When and how are licenses issued?

include payment of the annual certification fee as provided in Section 11 of this Act. Each salesman license issued shall be delivered or mailed to the broker with whom the salesman is associated and shall be kept under his custody and control.

(b) An applicant is not permitted to engage in the real estate business either as a broker or salesman until a license evidencing his authority to engage in the real estate business has been received.

(c) The commission by rule may adopt a system under which licenses expire on various dates during the year. Dates for payment of the annual certification fee shall be adjusted accordingly. For the year in which the certification date is changed, annual certification fees payable shall be prorated on a monthly basis so each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On certification of the license on the new certification date, the total annual certification fee is payable.

(d) Any other provision of this Act notwithstanding, the commission may issue licenses valid for a period not to exceed 24 months and may charge and collect certification fees for such period; provided, however, that such certification fees shall not, calculated on an annual basis, exceed the amounts established in Section 11 of this Act, and further provided that the educational conditions for annual certification established in Subsection (d) of Section 7 of this Act shall not be waived by the commission.

Section 10. If the commission declines or fails to license an applicant, it shall immediately give written notice of the refusal to the applicant. Before the applicant may appeal to a district court as provided in Section 18 of this Act, he must file within 10 days after the receipt of the notice an appeal from the ruling, requesting a time and place for a hearing before the commission. The commission shall set a time and place for the hearing within 30 days from the receipt of the appeal, giving 10 days' notice of the hearing to the applicant. The time of the hearing may be continued from time to time with the consent of the applicant. Following the hearing, the commission shall enter an order which is, in its opinion, appropriate in the matter concerned.

If an applicant fails to request a hearing as provided in this section, the commission's ruling shall become final and not subject to review by the courts.

Visual #19
What review procedures exist should the Commission decline or fail to issue a license?

Section 11. The commission shall charge and collect the following fees:

(1) a fee not to exceed $100 for the filing of an original application for real estate broker licensure;

(2) a fee not to exceed $100 for annual certification of real estate broker licensure status;

(3) a fee not to exceed $50 for the filing of an original application for salesman licensure;

(4) a fee not to exceed $50 for annual certification of real estate salesman licensure status;

(5) a fee not to exceed $25 for taking a license examination;

(6) a fee not to exceed $10 for filing a request for a license for each additional office or place of business;

(7) a fee not to exceed $20 for filing a request for a license for a change of place of business or change of sponsoring broker;

(8) a fee not to exceed $10 for filing a request to replace a license lost or destroyed.

(9) a fee not to exceed $400 for filing an application for approval of a real estate course pursuant to the provisions of Subsection (f) of Section 7 of this Act; and

(10) a fee not to exceed $200 per annum for and in each year of operation of a real estate course, established pursuant to the provisions of Subsection (f) of Section 7 of this Act.

(11) a fee of $15 for transcript evaluation.

Visual #20
What license fees are collected by the Commission?

Section 12. (a) Each resident broker shall maintain a fixed office within this state. The address of the office shall be designated on the broker's license. Within 10 days after a move from a previously designated address, the broker shall submit an application for a new license, designating the new location of his office, together with the required fee, whereupon the commission shall issue a license, reflecting the new location, provided the new location complies with the terms of this section.

(b) If a broker maintains more than one place of business within this state, he shall apply for, pay the required fee for, and obtain an additional license to be known as a branch office license for each additional office he maintains.

Visual #21
What are the office requirements for a licensee?

(c) The license or licenses of the broker shall at all times be prominently displayed in the licensee's place or places of business.

(d) Each broker shall also prominently display in his place or in one of his places of business the license of each real estate salesman associated with him.

Section 13. (a) When the association of a salesman with his sponsoring broker is terminated, the broker shall immediately return the salesman license to the commission. The salesman license then becomes inactive.

Visual #22
What happens if a salesperson and sponsoring broker terminate their association?

(b) The salesman license may be activated if, before the license expires, a request, accompanied by the required fee, is filed with the commission by a licensed broker advising that he assumes sponsorship of the salesman.

Section 14. (a) It is unlawful for a licensed broker to employ or compensate directly or indirectly a person for performing an act enumerated in the definition of real estate broker in Section 2 of this Act if the person is not a licensed broker or licensed salesman in this state or an attorney at law licensed in this state or in any other state. However, a licensed broker may pay a commission to a licensed broker of another state if the foreign broker does not conduct in this state any of the negotiations for which the fee, compensation, or commission is paid.

Visual #23
Who may be compensated for real estate acts?

(b) A resident broker of another state who furnishes the evidence required in Subsection (h) of Section 7 of this Act may apply for a license as a broker in this state. A nonresident licensee need not maintain a place of business in this state. The commission may in its discretion refuse to issue a broker license to an applicant who is not a resident of this state for the same reasons that it may refuse to license a resident of this state.

(c) Each nonresident applicant shall file an irrevocable consent that legal actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise, or in which the plaintiff may reside, by service of process or pleading authorized by the laws of this state, or by serving the administrator or assistant administrator of the commission. The consent shall stipulate that the service of process or pleading shall be valid and binding in all courts as if personal service had been made on the nonresident broker in this state. The consent shall be duly acknowledged, and if made by a corporation,

shall be authenticated by its seal. A service of process or pleading served on the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address which the commission has for the nonresident broker against whom the process or pleading is directed. No default in an action may be taken except on certification by the commission that a copy of the process or pleading was mailed to the defendant as provided in this section, and no default judgment may be taken in an action or proceeding until 20 days after the day of mailing of the process or pleading to the defendant.

Notwithstanding any other provision of this subsection, a nonresident of this state who resides in a city whose boundaries are contiguous at any point to the boundaries of a city of this state, and who has been an actual bona fide resident of that city for at least 60 days immediately preceding the filing of his application, is eligible to be licensed as a real estate broker or salesman under this Act in the same manner as a resident of this state. If he is licensed in this manner, he shall at all times maintain a place of business either in the city in which he resides or in the city in this state which is contiguous to the city in which he resides, and he may not maintain a place of business at another location in this state unless he also complies with the requirements of Section 14(b) of this Act. The place of business must satisfy the requirements of Subsection (a) of Section 12 of this Act, but the place of business shall be deemed a definite place of business in this state within the meaning of Subsection (a) of Section 12.

Section 15. The commission may, on its own motion, and shall, on the verified complaint in writing of any person, provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate the actions and records of a real estate broker or real estate salesman. The commission may suspend or revoke a license issued under the provisions of this Act at any time when it has been determined that:

(1)(A) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence; or

Visual #24
What are causes for license suspension or revocation?

(B) a final money judgment has been rendered against the licensee resulting from contractual obligations of the licensee incurred in the pursuit of his business, and such judgment remains unsatisfied for a period of more than six months after becoming final; or

(2) the licensee has procured, or attempted to procure, a real estate license, for himself or a salesman, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license; or

(3) the licensee, when selling, buying, trading, or renting real property in his own name, engaged in misrepresentation or dishonest or fraudulent action;

(4) the licensee has failed within a reasonable time to make good a check issued to the commission after the commission has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the commission's records; or

(5) the licensee has disregarded or violated a provision of the Act; or

(6) the licensee, while performing an act constituting an act of a broker or salesman, as defined by this Act, has been guilty of:

(A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the broker or salesman. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase; or

(B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when the licensee could not or did not intend to keep such promise; or

(C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salesmen, advertising, or otherwise; or

(D) failing to make clear, to all parties of a transaction, which party he is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties; or

(E) failing within a reasonable time properly to account for or remit money coming into his possession which belongs to others, or commingling money belonging to others with his own funds; or

Visual #25
Other reasons—continued

(F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesman in this state or in any other state, or not an attorney at law licensed in this state or any other state, for compensation for services as a real estate agent; or

(G) failing to specify in a listing contract a definite termination date which is not subject to prior notice; or

(H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal; or

(I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice; or

(J) acting in the dual capacity of broker and undisclosed principal in a transaction; or

(K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property; or

(L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or his authorizing agent; or

(M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract; or

(N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner or lessor, knowing that the owner or lessor had a written outstanding contract, granting exclusive agency in connection with the property to another real estate broker; or

(O) offering real property for sale or for lease without the knowledge and consent of the owner or his authorized agent, or on terms other than those authorized by the owner or his authorized agent; or

(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by

Visual #26
Other reasons—continued

newspaper, radio, television, or display which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent; or

(Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular; or

(R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action; or

(S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act; or

(T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document; or

(U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or be furnished with or obtain a policy of title insurance; or

(V) conduct which constitutes dishonest dealings, bad faith, or untrustworthiness; or

(W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license; or

(X) disregarding or violating a provision of this Act; or

(Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state; or

(Z) disbursing money deposited in a custodial, trust, or escrow account, as provided in Subsection (Y)

Visual #27
Other reasons—continued

before the transaction concerned has been consummated or finally otherwise terminated; or

(AA) discriminating against an owner, potential purchaser, lessor, or potential lessee on the basis of race, color, religion, sex, national origin, or ancestry. Prohibited discrimination shall include but not be limited to directing prospective home buyers or lessees interested in equivalent properties to different areas according to the race, color, religion, sex, national origin, or ancestry of the potential owner or lessee; or

(7) the licensee has failed or refused on demand to produce a document, book, or record in his possession concerning a real estate transaction conducted by him for inspection by the Real Estate Commission or its authorized personnel or representative; or

(8) the licensee has failed within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of this Act; or

(9) the licensee has failed without just cause to surrender to the rightful owner, on demand, a document or instrument coming into his possession.

The provisions of this section do not relieve a person from civil liability or from criminal prosecution under this Act or under the laws of this state.

Section 15A. If the commission revokes a person's license issued under this Act, the commission may not issue another license to the person for one year after the revocation.

Section 15B. It is the intent of the legislature that the commission only is vested with the authority and responsibility for the administration, implementation, and enforcement of this Act. Duties, functions, and responsibilities of the commission's administrative assistants, agents, investigators, and all other employees shall be those assigned and determined by the commission. Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of this Act unless expressly authorized by the commission after due consideration of the circumstances and determination by the commission that such measures are necessary to carry out the purposes of this Act. No investigations of licensees or any other actions against licensees shall be initiated on the basis of anonymous complaints whether in writing or otherwise but shall be initiated

Visual #28
What procedures does the Commission follow in the investigation of complaints?

only upon the commission's own motion or a verified written complaint. Upon the adoption of such motion by the commission or upon receipt of such complaint, the licensee shall be notified promptly and in writing unless the commission itself, after due consideration, determines otherwise. Provided, however, that the commission shall have the right and may, upon majority vote, rule that an order revoking, canceling, or suspending a license be probated upon reasonable terms and conditions determined by the commission.

Section 16. (a) A license granted under the provisions of this Act shall be suspended or revoked by the commission on proof that the licensee, not being licensed and authorized to practice law in this state, for a consideration, reward, pecuniary benefit, present or anticipated, direct or indirect, or in connection with or as a part of his employment, agency, or fiduciary relationship as a licensee, drew a deed, note, deed of trust, will, or other written instrument that may transfer or anywise affect the title to or an interest in land, except as provided in the subsections below, or advised or counseled a person as to the validity or legal sufficiency of an instrument or as to the validity of title to real estate.

Visual #29
What constitutes the unauthorized practice of law by a licensee?

(b) Notwithstanding the provisions of this Act or any other law, the completion of contract forms which bind the sale, exchange, option, lease, or rental of any interest in real property by a real estate broker or salesman incident to the performance of the acts of a broker as defined by this article does not constitute the unauthorized or illegal practice of law in this state, provided the forms have been promulgated for use by the Texas Real Estate Commission for the particular kind of transaction involved, or the forms have been prepared by an attorney at law licensed by this state and approved by said attorney for the particular kind of transaction involved, or the forms have been prepared by the property owner or prepared by an attorney and required by the property owner.

(c) A Texas Real Estate Broker-Lawyer Committee is hereby created which, in addition to other powers and duties delegated to it, shall draft and revise contract forms capable of standardization for use by real estate licensees and which will expedite real estate transactions and reduce controversies to a minimum while containing safeguards adequate to protect the interests of the principals to the transaction.

(d) The Texas Real Estate Broker-Lawyer Committee shall have 12 members including six members

appointed by the Texas Real Estate Commission and six members of the State Bar of Texas appointed by the President of the State Bar of Texas. The members of the committee shall hold office for staggered terms of six years with the terms of two commission appointees and two State Bar appointees expiring every two years. Each member shall hold office until his successor is appointed. A vacancy for any cause shall be filled for the expired term by the agency making the original appointment. Appointments to the committee shall be made without regard to race, creed, sex, religion, or national origin.

(e) In the best interest of the public the commission may adopt rules and regulations requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the Texas Real Estate Commission; provided, however, that the Texas Real Estate Commission shall not prohibit a real estate broker or salesman from using a contract form or forms binding the sale, exchange, option, lease, or rental of any interest in real property which have been prepared by the property owner or prepared by an attorney and required by the property owner. For the purpose of this section, contract forms prepared by the Texas Real Estate Broker-Lawyer Committee appointed by the commission and the State Bar of Texas and promulgated by the commission prior to the effective date of this Act shall be deemed to have been prepared by the Texas Real Estate Broker-Lawyer Committee. The commission may suspend or revoke a license issued under the provisions of this article when it has determined that the licensee failed to use a contract form as required by the commission pursuant to this section.

Section 17. (a) Before a license is suspended or revoked, the licensee is entitled to a public hearing. The commission shall prescribe the time and place of the hearing. However, the hearing shall be held, if the licensee so desires, within the county where the licensee has his principal place of business, or if the licensee is a nonresident, the hearing may be called for and held in any county within this state. The notice calling the hearing shall recite the allegations against the licensee and the notice may be served personally or by mailing it by certified mail to the licensee's last known business address, as reflected by the commission's records, at least 10 days prior to the date set for the hearing. In the hearing, all witnesses shall be duly sworn and stenographic notes of the proceedings shall be taken and filed as a part of the records of the case. A party to the proceeding desiring it shall be furnished

Visual #30
What procedures are followed in a Commission hearing?

with a copy of the stenographic notes on the payment to the commission of a fee of $1.50 per page plus applicable sales tax and postage. After a hearing, the commission shall enter an order based on its findings of fact adduced from the evidence presented.

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records or documents. The process issued by the commission may extend to all parts of the state, and the process may be served by any person designated by the commission. The person serving the process shall receive compensation to be allowed by the commission, not to exceed the fee prescribed by law for similar services. A witness subpoenaed who appears in a proceeding before the commission shall receive the same fees and mileage allowances as allowed by law, and the fees and allowances shall be taxed as part of the cost of the proceedings.

(c) If, in a proceeding before the commission, a witness fails or refuses to attend on subpoena issued by the commission, or refuses to testify, or refuses to produce a record or document, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony and the production of the documents and records shall be enforced by a court of competent jurisdiction of this state in the same manner as the attendance, testimony of witnesses, and production of records are enforced in civil cases in the courts of this state.

(d) If a hearing relating to the denial, suspension, or revocation of a license under this Act is conducted by the administrator or assistant administrator, the applicant for the license or the licensee who is adversely affected by the decision of the administrator or assistant administrator is entitled to request a rehearing by the commission itself on making a timely motion for the rehearing.

Section 18. (a) A person aggrieved by a ruling, order, or decision of the commission has the right to appeal to a district court in the county where the hearing was held within 30 days from the service of notice of the action of the commission.

Visual #31
What is the judicial review procedure for Commission hearings?

(b) The appeal having been properly filed, the court may request of the commission, and the commission on receiving the request shall within 30 days prepare and transmit to the court, a certified copy of its entire record in the matter in which the appeal has been

taken. The appeal shall be tried in accordance with Texas Rules of Civil Procedure.

(c) In the event an appeal is taken by a licensee or applicant, the appeal does not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

(d) If an aggrieved person fails to perfect an appeal as provided in this section, the commission's ruling becomes final.

Section 18A. (a) Any listing contract form adopted by the commission relating to the contractual obligations between a seller of real estate and a real estate broker or salesman acting as an agent for the seller shall include a section that informs the parties to the contract that real estate commissions are negotiable.

Visual #32
What items should be contained in a listing contract form?

(b) When appropriate to the form, it shall include a section explaining the availability of Texas coastal natural hazards information important to coastal residents.

Section 18B. (a) If a person files a complaint with the commission relating to a real estate broker or salesman, the commission shall furnish to the person an explanation of the remedies that are available to the person under this Act and information about appropriate state or local agencies or officials with which the person may file a complaint. The commission shall furnish the same explanation and information to the person against whom the complaint is filed.

Visual #33
How may parties to a complaint gain access to the Commission's information file?

(b) The commission shall keep an information file about each complaint filed with the commission.

(c) If a written complaint is filed with the commission relating to a real estate broker or salesman, the commission, at least as frequently as quarterly and until the complaint is finally resolved, shall inform the complainant and the person against whom the complaint is filed of the status of the complaint.

Section 18C.

Section 18C. This section was amended by the 69th Legislature regular session of 1985. Another Teacher Instructional Packet (TIP-11) describes this section on the real estate inspector in detail.

Section 19. (a) A person acting as a real estate broker or real estate salesman without first obtaining a license is guilty of a misdemeanor and on conviction shall be punishable by a fine of not less than $100 nor more than $500, or by imprisonment in the county jail for a term not to exceed one year, or both; and if a corporation, shall be punishable by a fine of not less than $1,000 nor more than $2,000. A person, on conviction of a second or subsequent offense, shall be punishable by a fine of not less than $500 nor more than $1,000, or by imprisonment for a term not to exceed two years, or both; and if a corporation, shall be punishable by a fine of not less than $2,000 nor more than $5,000.

Visual #34
What are the penalties for acting as a real estate broker or salesperson without first obtaining a license?

(b) In case a person received money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of Subsection (a) of this section, he shall, in addition, be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received; as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person.

(c) When in the judgment of the commission a person has engaged, or is about to engage, in an act or practice which constitutes or will constitute a violation of a provision of this Act, the county attorney or district attorney in the county in which the violation has occurred or is about to occur, or in the county of the defendant's residence, or the attorney general may maintain an action in the name of the State of Texas in the district court of such county to abate and temporarily and permanently enjoin the acts and practices and to enforce compliance with this Act. The plaintiff in an action under this subsection is not required to give a bond, and court costs may not be adjudged against the plaintiff.

Section 20. (a) A person may not bring or maintain an action for the collection of compensation for the performance in this state of an act set forth in Section 2 of this Act without alleging and proving that the person performing the brokerage services was a duly-licensed real estate broker or salesman at the time the alleged services were commenced, or was a duly-licensed attorney at law in this state or in any other state.

Visual #35
What is required in order for compensation to be collected?

(b) an action may not be brought in a court in this state for the recovery of a commission for the sale or

(1) register his or her current name, type of legal entity, mailing address, place of business or businesses, and business telephone number or numbers with the commission;

(2) furnish to the commission a bond executed by said person, as principal, and a surety company authorized to do business in this state, as surety, in the principal sum of $25,000 payable to the commission for the purpose of reimbursing aggrieved persons who suffer monetary damages by reason of conduct by the inspector which constitutes fraud, misrepresentation deceit, false pretenses, or trickery; and

(3) pay the following fees to the commission:

(i) a fee not to exceed $100 for the filing of an original registration;

(ii) a fee not to exceed $100 for annual certification of registration status; and

(iii) a fee not to exceed $10 for a change of registration information.

(b) The bond required by Subsection (a)(2) hereof shall be open to successive claims up to the amount of face value of the bond and the surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

Visual #36
What regulations govern inspectors of real property improvements?

(c) No person required to register pursuant to the provisions of this section shall pay to any person who is acting as the agent, representative, attorney, or employee of the owner or prospective owner of real property any consideration, either directly or indirectly, as an inducement or compensation for the issuance, purchase, or acquisition of the inspection of improvements to real property.

(d) The commission shall assign a registration number to each person registered in accordance with this section, and said registration number shall be published in connection with the business use of such registrant's name in soliciting or performing inspections of improvements to real property. Only persons registered in accordance with the section shall be entitled to use the designation "Registered Real Estate Inspector."

(e) It is the intent of the legislature that the provisions of this section shall not apply to any electrician,

plumber, carpenter, any person engaging in the business of structural pest control in compliance with the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes), or any other person who repairs, maintains, or inspects improvements to real property and who does not hold himself or herself out to the public via personal solicitation or public advertising as being in the business of inspecting such improvements pursuant to the provisions of any earnest money contract form adopted by the commission.

(f) The provisions of this section shall not be construed so as to prevent any person from performing any and all acts which said person is authorized to perform pursuant to a license issued by the State of Texas or any governmental subdivision thereof.

(g) Any person or persons who willfully violate this section are guilty of a Class B misdemeanor.

(h) It shall be a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, as amended, and a violation of this section for any person required to register pursuant to the provisions of this section to perform an inspection pursuant to a written contract which does not contain the following statement in at least 10-point bold type above or adjacent to the signature of the purchaser of the inspection, to wit:

"NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT. FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY, OR THE ATTORNEY OF YOUR CHOICE."

(i) Any violation of this section is a deceptive trade practice and is actionable by any person for $1,000 as a civil penalty or actual damages sustained, whichever is greater. Any plaintiff who shows a violation of this section shall recover court costs and attorney's fees that are reasonable in relation to the amount of work expended. Such violation is also actionable by any consumer as a deceptive trade practice pursuant to Subchapter E, Chapter 17, Business & Commerce Code, as amended.

purchase of real estate unless the promise or agreement on which the action is brought, or some memorandum thereof, is in writing and signed by the party to be charged or signed by a person lawfully authorized by him to sign it.

(c) When an offer to purchase real estate in this state is signed, the real estate broker or salesman shall advise the purchaser or purchasers in writing, that the purchaser or purchasers should have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or that the purchaser or purchasers should be furnished with or obtain a policy of title insurance. Failure to advise the purchaser as provided in this subsection precludes the payment of or recovery of any commission agreed to be paid on the sale.

Visual #37
Where can I write for more information?

General Provisions

- License required to engage in real estate
- Brokers are responsible to:
  --Texas Real Estate Commission
  --General Public
  --Clients
- Commissions from and through sponsoring broker

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Visual #1

Real Estate

- A leasehold
- Any other interest or estate in land

A Broker

One who:

- Sells, exchanges, purchases, rents or leases...
- Offers to ...
- Negotiates or attempts to negotiate ...
- Lists, offers, attempts or agrees to list ...
- Appraises ...
- Auctions ...
- Buys or sells ...
- Aids in locating ...
- Procures prospects ...
- Procures properties ...

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Visual #3

A Salesperson

- Associated with a licensed broker
- Performs acts or transactions defined in Act

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Visual #4

A Person

- An individual
- A partnership
- A corporation

The Commission

The Texas Real Estate Commission

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Visual #5

Exemptions

- Attorneys
- Public officials
- Receivers, trustees, administrators executors or guardians
- Persons under court order or authority of a will
- Builder's employees
- On-site apartment managers
- Parties to mineral interest transactions
- Those renting or leasing personal real estate
- Those conducting cemetery lot transactions

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Visual #6

Acts of Broker, Salesperson

Directly or indirectly

- offers, attempts, agrees to perform or performs an act defined in Subdivision 2 and 3 of this Act
- Single act constitutes violation

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Visual #7

Commission Composition

- Nine members
- Appointed by governor
- Six-year, staggered terms
- Six brokers
- Three general public representatives

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Visual #8

Administration

- Commission selects staff
- Monies to separate account

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- $15 from each broker
- $7.50 from each salesperson

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Visual #10

Requirements

- Salesperson files with broker
- Requirements
  --U.S. citizen or lawfully admitted alien
  --18 years old
  --Texas resident for at least 60 days
  --File application
  --Demonstrate honesty, trustworthiness, integrity and competency

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Visual #11

Competency

- Exams throughout state
- Commission provides study material
- Reexamination possible
- Exam taken within one year of filing

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Visual #12

Required Courses

- Core real estate courses (or equivalent)
  - --principles
  - --appraisal
  - --law
  - --law (contracts)
  - --finance
  - --marketing
  - --mathematics
  - --brokerage
  - --property management
  - --investments

Broker Experience

- Two years active experience as a licensed salesperson during the 36 months preceding application
- Satisfied educational requirements

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Visual #14

Educational Requirements

Salesperson
1-1-85
12 semester hours pre-licensure
--6 hours in core real estate
--6 hours in core or related
6 semester hours core, post-licensure

Broker
60 semester hours
(12 core)

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Visual #15

Other Required Courses

All applicants must complete:
--3 classroom hours on housing discrimination, housing credit discrimination and community reinvestment
--or--
--3 semester hours on constitutional law

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Visual #16

Recovery Fund

- Remedies monetary damages caused by licensees through:
  --fraud
  --misrepresentation
  --deceit
  --false pretense
  --trickery
- $10 assessment paid by licensees
- Fund replenished as needed
- $20,000 limit per claim
- $50,000 limit per judgment per licensee
- Disciplinary proceedings may follow

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Visual #17

When and How

- When:

--applicant meets requirements
--applicant pays fees

- How:

--license mailed to sponsoring broker

- May not engage in real estate until license received

- 24-month limit

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Visual #18

Review Procedures

- Applicant notified in writing
- Notice of appeal filed within 10 days
- Hearing set within 30 days
- Applicant given 10 days notice
- Commission's ruling final if no hearing is requested

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Visual #19

Licensee Fees

No more than:

- $100 for original broker applications
- $100 for annual broker certification
- $50 for original salesperson application
- $50 for annual salesperson certification
- $25 for license examination
- $10 for additional office license
- $20 for change of office or sponsoring broker
- $10 for replacement license
- $400 for real estate course approval application
- $200 per year for operation of real estate course
- $15 for transcript evaluation

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Visual #20

Office Requirements

- Each broker:
- Maintains fixed Texas office
- Obtains new office if address changed
- Obtains license for each branch office
- Displays all licenses

What Happens If ...

- Broker immediately returns license to Commission
  -- and salesperson becomes inactive
- Inactive license may be activated
  -- if broker assumes sponsorship
  --required fee is paid

Compensation

- Licensed salesperson
- Licensed broker
- Attorney-at-law

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Visual #23

Suspension and Relocation

- Felony conviction
- Unsatisfied money judgment
- Misstatement on application
- Fraudulent activity
- Bad check to Commission
- Violation of Act
- Material misrepresentation
- Making false promises
- Continued misrepresentation
- Failing to clarify which party is represented
- Commingling funds
- Payments to nonlicensee
- Failure to specify contract termination date
- Profit on expenditures made for principal

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Visual #24

Other Reasons

- Selling property through lottery
- Acting as both principal and broker
- Guaranteeing future profits
- Placing sign without owner's consent
- Breaking contract to obtain new one
- Negotiating sale of property under contract to another
- Offering property without owner's consent

Other Reasons

- Misleading advertising
- Altering invoice
- Unjustified threat of legal action
- Conspiracy to circumvent law
- Failure to furnish documents
- Failure to advise purchaser on title insurance

Other Reasons

- Dishonest dealings
- Negligence
- Failure to deposit escrow
- Premature disbursement of escrow
- Discrimination
- Failure to produce documents for the Commission
- Failure to provide information to the Commission
- Failure to surrender documents to the owner

Complaint Investigation

- Commission has authority to enforce Act
- Commission assigns duties to staff
- No undercover investigations without authorization
- No investigations of anonymous complaints

Unauthorized Practice of Law

When a real estate licensee:

Draws a deed, note, deed of trust, will or other written instrument that may transfer or otherwise affect the title to or an interest in land

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Visual #29

Hearing Procedures

- Licensee entitled to public hearing
  - Witnesses may be subpoenaed
  - Hearings treated in same manner as civil case
  - Licensee entitled to hearing by Commission

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Visual #30

Judicial Review

- Right to appeal within 30 days
- Texas rules of civil procedures apply
- Court may dispose of appeal and enter decision
- If not appealed, Commission's decision final

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Visual #31

Listing Contract

- Commissions are negotiable
- Texas coastal hazards information

Information File

- Commission provides both parties with information
- Information file kept on each complaint
- Both parties informed quarterly

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Visual #33

Penalties

Individuals:
-- $100 to $500 fine
-- 1 year in jail
--penalty not less than compensation received, not more than 3 times sum

Corporations:
-- $2,000 to $5,000 fine

Compensation

- Proof that person performing services was licensed
- Agreement in writing and signed by person charged or authorized representative

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Visual #35

For More Information

Texas Real Estate Commission
P.O. Box 12188
Capitol Station
Austin, Texas 78711

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Visual #36

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